

REMARKS

Applicants have carefully considered the Examiner's comments and respectfully request reconsideration of the claims pending in this application in view of this amendment and response.

SUMMARY OF CLAIM STATUS

Claims 1-66 are pending in the application. In the Office Action of May 16, 2003, claims 1-2, 9, 13-33, 36-37, 42, 47-63, and 66 were rejected under 35 U.S.C. § 102(e), and claims 3-8, 10-12, 34-35, 38-41, 43-46, and 64-65 were rejected under 35 U.S.C. § 103. Applicants are amending claims 34-37, 39, 42, 45-49, and 64-65 to correct typographical errors, and are amending claim 62 to further define an embodiment of the invention. Applicants respectfully submit that no new matter is being added by these amendments.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102(e)

Claims 1-2, 9, 13-33, 36-37, 42, and 47-63 stand rejected under 35 U.S.C. § 102(e) as being unpatentable over Gelman et al. (U.S. Pat. No. 6,415,329) ("Gelman"). Claim 66 stands rejected based upon 35 U.S.C. § 102(e) as being unpatentable over Lowery et al. (U.S. Pat. No. 6,415,335) ("Lowery"). Applicants respectfully traverse. Without admitting that either Gelman or Lowery is prior art and reserving the right to establish that neither Gelman nor Lowery is prior art, Applicants respectfully submit that the pending claims are patentable over Gelman and Lowery because both Gelman and Lowery fail to disclose each and every limitation in each of claims 1-2, 9, 13-33, 36-37, 42, 47-63, and 66.

Claim 1

To sustain a rejection under 35 U.S.C. § 102(e) each and every element of claim 1 must be found in Gelman. This is not the case as explained more fully below. The Examiner has indicated that he believes Gelman:

teaches a method for communicating an Internet message between a source and a destination over the Internet comprising:

selecting a node of a first type (source gateway 12 of Fig. 1);

selecting a node of a second type (destination gateway 16 of Fig. 1);

. . . .

Office Action at 3.

While Gelman depicts a source gateway 12 in Fig. 1 and a destination gateway 16 in Fig. 1, Gelman does not disclose or teach “selecting a node of first type” or “selecting a node of a second type” as recited in claim 1. Even if one were to assume that the source gateway and the destination gateway in Fig. 1 satisfied the limitations of “a node of a first type” and “a node of a second type” there is no disclosure in Gelman of any methodology of “selecting” either of these nodes. Instead Gelman describes a way of transmitting packets over an existing satellite link when those packets happen to be routed to the source gateway or to the destination gateway application without any suggestion that there is a choice in the destination gateway once the source gateway is defined. (Gelman col. 2:41, 2:46-57). Gelman simply does not disclose or teach, as Claim 1 requires “selecting a node,” either of a first type or a second type. Since this limitation is not disclosed in Gelman, it is respectfully submitted that claim 1 is allowable.

Claims 2, 9, 15-16

With regard to claims 2, 9, 15 and 16 the Examiner merely stated “Claims 2, 9, 15-16 are corresponding method claims of claim 1; therefore, they are rejected under the same

rationale.” Claims 2, 9, 15 and 16 are all independent claims and do not correspond to claim 1. While there are certain limitations that are the same they rise and fall independent of claim 1. None of these claims are anticipated by Gelman since each and every element is not found in Gelman.

Claim 2 requires “selecting a node of a first type.” As explained with regard to claim 1, Gelman does not disclose or teach this step.

Claim 9 requires “selecting a node of a first type and a node of a second type.” Gelman does not disclose or teach this step.

Claim 15 requires “selecting a node of a first type.” Gelman does not disclose or teach this step.

Claim 16 requires “selecting a node of a second type.” Gelman does not disclose or teach this step.

Should the examiner disagree, Applicants respectfully request that the Examiner point out and explain where in Gelman these steps can be found to allow the Applicants to specifically address the Examiner’s beliefs.

#### Claims 13-14

The Examiner’s basis for rejection of claims 13 and 14 is that “Claims 13-14 are corresponding method claims of claim 1 and 9 with reverse direction; therefore, they are rejected under the same rationale.” Claim 13 depends from claim 1 and 14 depends from claim 9. As dependent claims they include each and every element of the independent claims from which they depend.

As explained above, claim 1 requires “selecting a node of first type” and “selecting a node of a second type.” Gelman simply does not disclose these steps and as such for the same reason that Gelman does not anticipate claim 1, it does not anticipate claim 13.

As also explained above, claim 9 requires the step of “selecting a node of first type and a node of a second type.” Gelman does not disclose this step and as such for the same reason that Gelman does not anticipate claim 9, it does not anticipate claim 14.

#### Claims 17-19

With regard to claims 17-19, the Examiner explained that “Gelman teaches the method of claims 1-2 and 9, wherein the communicating step (c) comprises redirecting the Internet message from the source to the node of the first type.” Claims 17-19 depend upon claims 1, 2, and 9, respectively, and as such each of them includes each and every element of the claims from which they depend. As explained above, Gelman does not disclose or teach the steps of “selecting a node of first type” and “selecting a node of a second type” required by claim 1; the step of “selecting a node of a first type” required by claim 2; or the step of “selecting a node of first type and a node of a second type” of claim 9. As such whether or not Gelman teaches the steps in claims 17-19 added to claims 1, 2 and 9 respectively, the claims are not anticipated by Gelman since every limitation of the claims is not disclosed or taught by Gelman.

#### Claims 20-22, 25-26

With regard to claims 20-22 and 25-26, the Examiner’s reasons for rejection were that “Gelman teaches the method of claims 1-2, 9 and 15-16, wherein the first protocol is a standard protocol (TCP), the second protocol is a high-performance protocol (WLP), and the

third protocol is a standard protocol (TCP).” Setting aside the question as to whether Gelman actually discloses the “high-performance protocol” claimed in claims 20-22 and 25-26, which is not addressed, claims 20-22 and 25-26 are all dependent claims and if each and every element of the independent claims are not found in Gelman, then each and every element of the claims that depend on those independent claims are not found in Gelman.

Claims 20-22 depend upon claims 1, 2 and 9. As explained above, Gelman does not disclose or teach the steps of “selecting a node of first type” and “selecting a node of a second type” required by claim 1; the step of “selecting a node of a first type” required by claim 2; or the step of “selecting a node of first type and a node of a second type” required by claim 9. As such whether or not Gelman discloses or teaches the claimed “high-performance protocol” of claims 20-22, claims 20-22 are not anticipated by Gelman.

Claims 25 and 26 depend from claims 15 and 16, respectively. As explained above, Gelman does not disclose or teach the step of “selecting a node of first type” required by claim 15 or the step of “selecting a node of a second type” required by claim 16. As such, whether or not Gelman discloses or teaches the claimed “high performance protocol” of claims 25 and 26, claims 25 and 26 are not anticipated by Gelman.

#### Claims 23-24

With regard to claims 23-24, the Examiner’s basis for rejection was the belief that “Gelman teaches the method of claims 13-14, wherein the fourth protocol is a standard protocol (TCP), the fifth protocol is a high performance protocol (WLP), and the sixth protocol is a standard protocol (TCP).” Claims 23-24 depend upon Claims 13 and 14, respectively, which, in turn, depend upon claims 1 and 9, respectively. Since dependent

claims include each and every element of the claims from which they depend, claim 23 includes all of the steps of claim 1 and claim 24 includes all of the steps of claim 9.

As explained above, Gelman does not disclose or teach the steps of “selecting a node of first type” and “selecting a node of a second type” required by claim 1 or the step of “selecting a node of first type and a node of a second type” required by claim 9. As such whether or not Gelman discloses or teaches the claimed “high-performance protocol” of claims 23 and 24, claims 23 and 24 are not anticipated by Gelman.

#### Claims 27-33

With regard to claims 27-33, the Examiner’s reasons for rejection is that “Gelman teaches the method of claims 20-26, wherein the Internet message is a World Wide Web message.” Claims 27-33 depend upon claims 20-26, respectively, which depend upon claims 1, 2, 9, 15, and 16, respectively. Since dependent claims include each and every element of the claims from which they depend, claim 27 – 33 each include all of the steps of claims 1, 2, 9, 15 and 16, respectively.

As explained above, Gelman does not disclose or teach the steps of “selecting a node of first type” and “selecting a node of a second type” required by claim 1; the step of “selecting a node of a first type” required by claim 2; the step of “selecting a node of first type and a node of a second type” required by claim 9; the step of “selecting a node of first type” required by claim 15 or the step of “selecting a node of a second type” required by claim 16. As such, whether or not Gelman discloses or teaches the claimed method wherein “the Internet message is World-Wide Web message” of claims 27-33, claims 27-33 are not anticipated by Gelman.

Claims 36-37, 42

With regard to claims 36-37 and 42, the Examiner's basis for rejection is the belief that the claims are "corresponding system claims of claims 1-2 and 9; therefore, they are rejected under the same rationale."

Claims 36, 37 and 42 are independent apparatus claims and must be analyzed independently. Whether or not the methods of claims 1, 2 and 9 may or may not be performed in the systems claimed in claims 36, 37 and 42 or whether or not they are "corresponding" is not the question. The question is whether each and every element of claims 36, 37 and 42 is disclosed or taught by Gelman. As explained below, Applicants have identified at least one element in each of the claims that is not found in Gelman irrespective of whether or not the other elements are present, and hence, only the one element is discussed even though others may not be found in Gelman.

Claim 36 recites, among other things, "a first selector to identify a node of a first type from the one or more nodes of a first type and communicate the selection to the source" and "a second selector to identify a node of a second type from the one or more nodes of a second type and communicate the selection to a selected node of the first type." Gelman does not disclose or teach either of these elements. Gelman does not disclose any apparatus that could be considered a "selector."

The system claimed in claim 37 requires, among other things, "a selector to identify a node of a first type from the one or more nodes of a first type and communicate the selection to the source." Gelman does not disclose or teach such an element.

The system claimed in claim 42 requires, among other things, "a selector to identify a node of a first type from one or more nodes of a first type and communicate the selection to the source, and to identify a node of a second type from one or more nodes of a second type

and provide the selection to a selected node of a first type.” Gelman does not disclose or teach this element.

Should the Examiner disagree, he is respectfully requested to indicate what elements of Gelman are believed to correspond to these elements as well as any other believed to be found in Gelman.

Claims 47-61 and 63

With regard to claims 47-63, the Examiner’s basis for rejecting these claims is that “Claims 47-63 are corresponding system claims of claims 16-33; therefore, they are rejected under the same rationale.” Respectfully, claims 47-61 and 63 are apparatus claims and claims 16-33 are method claims. The mere fact that a step in a method may be found in a reference does not mean that a particular apparatus that may be able to perform that method is disclosed. While there are other elements that may not be found in Gelman, at least one of the elements of each of the rejected claims is not found in Gelman as explained below.

Claim 47 recites, among other things, “a selector to identify a node of a second type from the one or more nodes of a second type and provide the selection to a node of a first type.” Gelman does not disclose or teach a system with this element.

Claim 48 recites, among other things, “a first selector to identify a node of a first type from the one or more nodes of a first type and communicate the selection to a redirector” and “a second selector to identify a node of a second type from the one or more nodes of a second type and provide the selection to a selected node of a first type.” Gelman does not disclose or teach a system with these elements.



Claim 49 recites, among other things, “a selector to identify a node of a first type from the one or more nodes of a first type and communicate the selection to a redirector.” Gelman does not disclose or teach a system with this element.

Claims 50-61 and 63 are claims that all depend on other claims that have been discussed above. As explained above, since at least one of the elements of each of the independent claims is not found in Gelman, Gelman does not anticipate claims 50-61 and 63.

#### Claim 62

Claim 62 has been amended to depend from claim 45, and thus is allowable for at least the same reasons. Further, claim 62 has been amended to recite, among other things, “each selected node of the first type and each selected node of the second type is a computer that includes a receiver and implementing software that includes web proxy software” and “the first selector includes DNS server software that communicates the selection to the source using a DNS protocol.” None of the cited references, either alone or in combination, disclose, teach, or suggest either of these limitations recited in claim 62. Thus claim 62 is not anticipated by or obvious in view of any of the cited references, and is allowable.

#### Claim 66

The Examiner rejected claim 66 as being anticipated by Lowery. In particular the Examiner indicated his belief that Lowery:

teaches a method for managing dynamic web page generation requests, comprising:  
separating messages into a template (dyna-tags) and a customization  
(dynatext/dynablock) portion;  
communicating the template to the destination;  
communicating the customization portion to the destination;  
wherein the template includes information to reconstruct the message from the  
customization part

Office Action at 5 (citing Lowery col. 6:32-48). Initially it should be noted that even if Lowery did teach a method that included all of these steps, it would not anticipate claim 66 which recites, among other things, “separating a second message into the template and a second customization portion,” which, among other things is not found in Lowery.

Lowery does not disclose or teach other express limitations of Claim 66. Lowery does not disclose or teach “wherein the template includes information to reconstruct the second message from the second customization portion.” Since these limitations are not disclosed in Lowery, it is respectfully submitted that claim 66 is allowable. Should the Examiner disagree, he is respectfully requested to identify where these elements can be found so Applicants can fully consider the Examiner’s arguments.

CLAIM REJECTION UNDER 35 U.S.C. § 103

Claims 3-8, 10-12, 34-35, 38-41, 43-46, and 64-65 were rejected under 35 U.S.C. § 103 as being unpatentable over Gelman in view of Rochberger et al. (U.S. Pat. No. 6,483,808) (“Rochberger”). Applicants respectfully traverse. Without admitting that Gelman and Rochberger are prior art and reserving the right to establish that Gelman and Rochberger are not prior art, Applicants respectfully submit that the above-listed claims are patentable over Gelman in view of Rochberger because all of the elements of the rejected claims are not found in a combination of Gelman and Rochberger; (to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). MPEP Section 2143.03); there is no suggestion, express or otherwise, that Gelman should be modified in accordance with

Rochberger; and, even if they were combined, the combination would not necessarily be viable.

Claims 3, 5-8

With regard to claims 3 and 5-8, the Office Action states that “Gelman teaches the method of claim 1, but does not explicitly teach the step of determining the measure of communications performance for selecting a combination of the node of the first type and the node of the second type to optimize the measure of communications performance between the source and the destination.” Applicants agree with the Examiner that Gelman does not teach this method step. The Office Action then describes the Rochberger patent and concludes that “it would have been obvious to one having ordinary skill in the art at the time of the invention” to combine the two references. Office Action at 5-6. Applicants disagree with the Examiner and have found no express suggestion that the two references are or should be combined.

As an initial matter, as explained above, each and every element of the claims from which claims 3, and 5-8 depend is not found in Gelman. As such each and every element of the combination of Gelman and Rochberger do not include each and every element of the claims and therefore, on that basis alone, the rejection should be withdrawn

With regard to a motivation to combine, the Applicants respectfully submit that a desired outcome that an invention provides cannot be used as the motivation to combine the references if there is no such teaching in the references. The Applicants disagree with the assertion made in the Office Action that “it would have been obvious to one having skill in the art at the time the invention was made to modify the teaching of Gelman to include the step of determining the optimum route from a source to a destination node as suggested by

Rochberger.” Office Action at 6. Since neither Gelman nor Rochberger teaches or suggests a combination between Gelman and Rochberger, there is no teaching or suggestion to combine.

Furthermore, there would be no motivation to combine the teachings of Gelman and Rochberger. Neither Gelman nor Rochberger teach or disclose “selecting a node of the first type from among the plurality of candidate nodes of the first type to optimize the measure of communications performance” required by claim 3, “selecting a node of a second type from among the plurality of candidate nodes of the second type to optimize the measure of communications performance” required by claim 5; “selecting a node of a second type from among the plurality of candidate nodes of the second type to optimize the measure of communications performance” required by claim 6; “selecting a node of a first type so as to optimize a measure of communications performance for at least a sub-link in a link from the source to the destination via the node of the first type and the node of the second type” and/or “selecting a node of a second type so as to optimize a measure of communications performance for at least a sub-link in a link from the source to the destination via the node of the first type and the node of the second type” required by claim 7; or “selecting a node of the first type from among the plurality of candidate nodes of the first type to optimize the first measure of communications performance” and/or “selecting a node of a second type from among the plurality of candidate nodes of the second type to optimize a combination of the second and third measures of communications performance” required by claim 8.

Instead, Gelman describes a way of transmitting packets over an existing satellite link when those packets happen to be routed to the source gateway or to the destination gateway application without any suggestion that there is or should be a choice in the destination gateway once the source gateway is defined. Gelman does not teach or disclose, as recited by

claims 3, 5, and 8, “selecting a node of the first type,” or “selecting a node of the second type.”

As such, Gelman does not suggest that one should determine how to optimize the “selecting,” much less how to measure “communications performance for selecting a combination of the node of the first type and the node of the second type to optimize the measure of communications performance between the source and the destination.” Office Action at 6. Gelman does not teach or suggest optimizing anything or any methodology for optimizing.

The purported motivation to combine the teachings of Rochberger with Gelman is not explained in the Office Action. Rochberger is aimed at resolving the problem of determining optimum routes “in an ATM network.” (Rochberger col. 7:11-12). By contrast, Gelman is aimed at resolving certain problems with transmitting over “satellite or high delay-bandwidth” existing links that utilize TCP over IP. (Gelman Abstract).

Gelman is concerned with utilizing existing satellite links in a network to take advantage of the benefits described in Gelman of satellite transmissions. Nowhere does Rochberger discuss wireless links or teach why satellite communication methods would be desirable to combine with its teachings. Moreover, Rochberger does not discuss “selection” or routing with regard to its optimization measurement methodologies and nowhere teaches how one would utilize routing methodologies between a source and destination when “selecting a node of a first type” or “selecting a node of a second type” is involved.

In addition, even if the inventions were combined, there is nothing in Gelman and Rochberger to suggest that the inventions would even work together as a system. Gelman and Rochberger were designed for different applications, one for a new algorithm to use in known routing methodologies of terrestrial ATM networks that do not include nodes of a first type or

nodes of a second type nor use of more than one protocol, the other for utilizing existing satellite links for TCP/IP traffic.

Even assuming for the sake of argument that Gelman and Rochberger were combined, the combination would still fail to teach, suggest, or disclose a system that performs the steps of claims 3 and 5-8. Neither Gelman nor Rochberger, singly or in combination, discloses or suggests a system that performs these steps.

Far from suggesting these steps as explicitly required by the claim limitations, Rochberger merely teaches how to determine "the optimum route" from a source node to a destination node, neither of which are specialized nodes. (Rochberger col. 7:10-12). If Rochberger were combined with Gelman there would not necessarily be a selection of the existing satellite link as part as the path, as described in Gelman. In this combination there is no requirement that the source gateway 12 of Gelman would be selected. Thus, even if the source gateway 12 were a node of a first type as recited in claims 3, 5-8, there is no guarantee that that node would be selected, which is a requirement of claims 3, 5-8. Indeed, since Rochberger teaches an algorithm that optimizes the route between the source end station and the destination end station, it can be said to teach away from including any requirement that particular types of nodes be used.

Further, claims 3, 5-8 all require selection of the node of the second type. Again, even if destination gateway 16 were considered to be a node of a second type, there is no indication in Gelman that once the source gateway 12 is used, there is any choice other than to use destination gateway 16. Accordingly, one of ordinary skill in the art would not combine Gelman and Rochberger, because even if they were combined, the combination would still fail to disclose all limitations recited in claims 3, 5-8.

Therefore, claims 3, 5-8 are patentable over Gelman in view of Rochberger under 35 U.S.C. § 103.

Claim 4

With respect to claim 4, the Examiner states that it “is a corresponding method claim of claim 3; therefore, it is rejected under the same rationale.” Applicants respectfully submit that claim 4 is a separate claim from claim 3 and depends from claim 2 which depends from claim 1. In any event, claim 4 recites “selecting a node of the first type from among the plurality of candidate nodes of the first type to optimize the measure of communications performance,” which is also recited by claim 3. For all of the reasons explained above, claim 4 is not rendered obvious based on a combination of Gelman and Rochberger.

Claims 10-12

With respect to claims 10-12, the Examiner states that they are “corresponding method claims of claims 3 and 5-8; therefore, they are rejected under the same rationale.” Again, these are not corresponding claims, but separate claims that should be judged on their own merits.

As explained above, Gelman and Rochberger are not properly combinable and there is no suggestion to do so. Further, all of the steps recited in claims 10-12 are not found in the combination. If the Examiner disagrees, it is respectfully requested that the location where the precise steps can be found be pointed out so the Applicants can address the Examiner’s arguments. In any event if the basis for the rejection is the same as that for claims 3, 5-8, Applicants respectfully submit that claims 10-12 are allowable for at least the same reasons as claims 3, 5-8.

Claims 38-41, 43-44

With respect to claims 38-41 and 43-44, the Examiner states that they are “corresponding system claims of claims 3-7; therefore, they are rejected under the same rationale.” Again, these are not corresponding claims, but separate claims that should be judged on their own merits.

As explained above, Gelman and Rochberger are not properly combinable and there is no suggestion to do so. Further, all of the steps recited in claims 38-41 and 43-44 are not found in the combination. If the Examiner disagrees, it is respectfully requested that the location where the precise steps can be found be pointed out so the Applicants can address the Examiner’s arguments. In any event if the basis for the rejection is the same as that for claims 3-7, Applicants respectfully submit that claims 38-41 and 43-44 are allowable for at least the same reasons as claims 3-7.

With respect to claim 40, the claim requires a “second selector” wherein the “second selector identifies a node of the second type that optimizes a measure of communications performance for a sub-link between a selected node of the second type and the destination.” As described above, neither Gelman nor Rochberger, singly or in combination, teach a “selector.” Gelman involves mere forwarding from a source gateway application to a destination gateway application without any suggestion that there is a choice in the destination gateway once the source gateway is defined. (Gelman 2:46-57). Rochberger teaches a method to determine an optimum route from a source to a destination in an ATM network. (Rochberger 7:10-12). However, Rochberger does not teach or suggest that a second selector identify a “node of a second type from the one or more nodes of a second type and communicate the selection to a selected node of a first type,” much less when the



second selector “optimizes a measure of communications performance.” In other words, Rochberger does not teach or suggest routing on a segment-by-segment basis.

With respect to claim 44, the claim requires a “selector,” wherein the “selector identifies a node of the first type and a node of the second type that optimize a measure of communications performance for at least a sub-link in a link between the source and the destination.” A selector may be implemented many ways, including, by way of non-exclusive examples, by use of a stored table or database (Spec. 28:22) by “use [of] information obtained from a mapping system” (Spec. 17:2-3), or by “also tak[ing] into account characteristics of every sub-link in the link from the source to the destination, if desired.” (Spec. 17:9-10). Neither Rochberger nor Gelman, individually or in combination, describe a “selector,” much less a “selector [that] identifies a node of the first type and a node of the second type that optimize a measure of communications performance for at least a sub-link in a link between the source and the destination.”

#### Claims 45-46

With respect to claims 45-46, the Examiner states that they are “corresponding system claims of claims 13-14; therefore, they are rejected under the same rationale.” Again, these are not corresponding claims, but separate claims that should be judged on their own merits.

As explained above, Gelman and Rochberger are not properly combinable and there is no suggestion to do so. Further, all of the steps claimed in claims 45 and 46 are not found in the combination. If the Examiner disagrees, it is respectfully requested that the location where the precise steps can be found be pointed out so the Applicants can address the Examiner’s arguments. In any event if the basis for the rejection is the same as that for

claims 13 and 14, Applicants respectfully submit that claims 45 and 46 are allowable for at least the same reasons as claims 13 and 14.

Claims 34-35 and 64-65

Claims 34-35 and 64-65 stand rejected under 35 U.S.C. § 103 as being unpatentable over Zhao (U.S. Pat. No. 6,018,840) in view of Rochberger. Without admitting that Zhao and Rochberger are prior art and reserving the right to establish that Zhao and Rochberger are not prior art, Applicants respectfully submit that claims 34-35 and 64-65 are patentable over Zhao in view of Rochberger because even if they were combined, the combination would still fail to disclose all limitations of claims 34-35 and 64-65.

Claim 34

Specifically, with respect to Claim 34, the Examiner states:

Zhao teaches a method for providing web content to a source from a destination (Fig. 1) comprising:

- if the node includes the requested web content in its cache; communicating the web content from the node to the source; and
- if the node does not include the requested web content in its cache, communicating the Internet message requesting web content from the node (local content server 14) to the destination (source content server 10)

Office Action at 7 (citing Zhao Abstract). The Office Action states that Zhao does not “explicitly teach the node is selected so as to optimize a measure of communications performance,” but that Rochberger does teach “a method of determining the optimum route (data path) from a source to a destination node.” Office Action at 7-8 (citing Rochberger col. 7:10-28, 9:37-67, 10:1-21). The Office Action then concludes that “it would have been

obvious to one having ordinary skill in the art at the time of the invention” to combine the two references. Office Action at 8.

As noted above, Applicants respectfully submit that a desired outcome of the claimed invention cannot be used as the motivation to combine references if there is no suggestion in the references to combine them to achieve that desired result. Applicants respectfully disagree with the assertion made in the Office Action that it would have been “obvious to one having ordinary skill in the art at the time the invention was made to modify the teaching of Zhao to include the step of selecting the node so as to optimize a measure of communications from a source to a destination node.” Office Action at 8. Since neither Zhao nor Rochberger teaches or suggests a combination between Zhao and Rochberger, the Applicants contend that there is no suggestion to combine.

Furthermore, there is no motivation to combine the teachings of Zhao and Rochberger. Zhao does not teach or disclose the “selecting a node” step recited by claim 34. As such, Zhao does not suggest that one should determine how to optimize the “selecting,” much less how to “allow the system to compute and select the optimum routing path between the source and the destination from among possible routes to improve efficiency of data file distribution to remote users over the communication networks” Office Action at 8.

The motivation to combine the teachings with Rochberger with Zhao is not found in the Office Action. Rochberger is aimed at resolving the problem of determining optimum routes “in an ATM network.” (Rochberger col. 7:11-12). By contrast, Zhao is concerned with local servers containing subsets of data contained at a source server. (Zhao Abstract). In addition, even if the references were combined, there is nothing in Zhao and Rochberger to suggest that the teachings of the references would even work together as a system.

Even assuming for the sake of argument that Zhao and Rochberger were combined, the combination would still fail to teach, suggest, or disclose a system that performs the step of “selecting a node” recited by claim 34. Neither Zhao nor Rochberger, singly or in combination, discloses or suggests a system that performs the recited step of “selecting a node.” Rochberger merely teaches how to determine “the optimum route” from a defined node to another defined node. (Rochberger col. 7:10-12), but teaches nothing about selecting a node. Accordingly, one of ordinary skill in the art would not combine Zhao and Rochberger, because even if they were combined, the combination would still fail to disclose or suggest all the limitations recited by claim 34. Thus, claim 34 is not obvious and is allowable.

#### Claim 35

With regard to claim 35, the Office Action states that “Zhao-Rochberger teaches the method of claim 34, wherein using fuzzy logic to optimize the performance of a routing algorithm when the routing decision is based on multiple metrics (i.e., the network distance between the node and server), attributes (i.e., the probability of the web content is in the cache of the node) and/or parameters.” Office Action at 8 (citing Rochberger col. 9:37-58).

Claim 35 depends upon claim 34, which recites “selecting a node,” which, as described above, is neither taught nor suggested by Zhao or Rochberger, singly or in combination. Applicants respectfully submit that claim 35 is allowable for at least the same reasons.

Claims 64-65

With respect to claims 64-65, the Examiner states that they are “corresponding claims of claims 34-35; therefore, they are rejected under the same rational.” These are not corresponding claims, but separate claims that should be judged on their own merits.

As explained above, Gelman and Rochberger are not properly combinable and there is no suggestion to do so. Further, all of the steps claimed in claims 64 and 65 are not found in the combination. If the Examiner disagrees, it is respectfully requested that the location where the precise steps can be found be pointed out so the Applicants can address the Examiner’s arguments. In any event if the basis for the rejection is the same as that for claims 34 and 35, Applicants respectfully submit that claims 64 and 65 are allowable for at least the same reasons as claims 34 and 35.

In addition, claim 64 recites “a selector to identify a node . . . and communicate the selection to the source.” Each node comprises “a first transmitter to communicate the message to a selected node.” Neither Zhao nor Rochberger, singly or in combination, teaches selecting a node in the first place, much less contains any further teachings regarding a “selector,” communication of “the selection,” or any “transmitter to communicate the message to a selected node.”

CONCLUSION

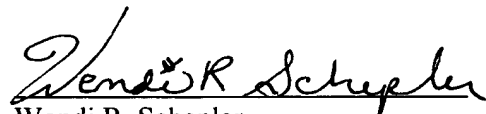
Based on the foregoing amendments and remarks, Applicants respectfully submit that all pending claims in the present application are in condition for allowance and respectfully request the issuance of a formal Notice of Allowance at an early date.

Applicants thank the Examiner for carefully examining the present application and considering this response and if a telephone conference would facilitate the prosecution of this application, the Examiner is invited to contact Applicants' attorney at the number listed below.

Respectfully submitted,

Dated: 9/10/2003

By:



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